



DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

CERE-M

14 JAN 1999

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Real Estate Policy Guidance Letter No. 21 -- Chapter 15-6, Revised AR 200-1 -- Real Property Acquisition, Outgrant and Disposal Transactions for Non-BRAC Military and Civil Works Real Property

1. Purpose. We have been asked to clarify the current Army guidance on when and under what circumstances an Environmental Baseline Survey (EBS) will be required for the disposal and outgrant of non-BRAC military and civil works real property interests. At the same time, we are setting forth guidance on FOSL/FOST/ECOP requirements for non-BRAC military and civil works real estate transactions that will apply unless superseded by DA Pamphlet 200-1.

2. Background

a. Revised Army Regulation 200-1 was published 21 February 1997. A copy can be downloaded from Internet at URL - <http://denix.cecer.army.mil/denix/Public/Policy/Army/ar200-1.html>.

b. Implementing procedures will be set forth in DA Pamphlet 200-1 (this pamphlet has not yet been published). Enclosed are portions of the draft Army pamphlet (Encl).

3. EBS - Extraordinary Circumstances.

a. Chapter 15-6 of the revised AR 200-1 addresses Real Property Acquisition, Outgrant and Disposal Transactions. In contrast to Chapter 12-5 of the 1990 AR 200-1, Chapter 15-6 of the revised AR specifically excludes reassignments within DA, permits, licenses, and easements from the requirements of this Chapter except where **extraordinary circumstances** exist (15-6(a)) or when otherwise desired by the Army (15-6(b)).

b. Chapter 15-6 does not provide any guidance for determining when **extraordinary circumstances** exist nor otherwise list activities that the Army may desire an EBS. It does state that an EBS is used to identify environmental contamination liabilities associated with real property transactions (15-6b). Consequently, an EBS should be performed when there is a likelihood that the real estate transaction will expose the Army to third party liability, fines and penalties and cleanup costs. Therefore, even though an EBS is specifically excluded for reassignments within DA, permits, licenses or easements, they should nevertheless be performed

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for licenses issued to state National Guard components; when hazardous materials are stored for one year or more or disposed on Army property except when authorized by 10 U.S.C. Section 2692 (as amended); and where the authorized use of Army lands and facilities poses a hazard to human health or the environment. We can assume that an EBS is not required for those real estate transactions for which an EA or EIS is not required, i.e., categorical exclusions.

c. An EBS is still required for sales divesting title, transfers of jurisdictions between agencies, and leases.

d. Regardless of when an EBS is performed, the installation commander (IC) or Army proponent for the prospective real estate transaction is responsible for complying with the requirements of Chapter 15-6 except for real estate transactions initiated by non-Army parties. In those cases the initiating party is responsible for completion and funding of the EBS (see paragraph 15-6(c)(1) of AR200-1).

#### 4. FOST, FOSL and ECOP

a. The results of an EBS evaluation will be documented in a Finding of Suitability to Transfer (FOST), for sales divesting title, and a Finding of Suitability to Lease (FOSL), for leases. An Environmental Condition of Property (ECOP) is prepared instead of a FOST when jurisdiction over property is being transferred to another federal agency. Since jurisdiction over property is not transferred when property is reported as excess to the General Services Administration, the FOST and ECOP requirements do not apply.

b. The signed FOSL, FOST or ECOP, and EBS, if not already on file at HQDA, should be submitted with a Report of Availability (ROA), for each outgrant, and the Report of Excess, for each disposal or transfer of jurisdictions between agencies.

5. The installation/Army proponent, MSC, or MACOM shall initiate, review and approve EBSs. For properties in DOD Environmental Condition of Property (ECOP) categories 1-3, the MACOM has the authority to approve FOSTs. All other FOSTs shall be approved by DASA (ESOH) for military actions or ASA (CW) for civil works actions exceeding the District's delegated authority (currently \$1000) until specific authority for approval of these FOSTs is further delegated to the MACOM. All ECOPs shall be approved by the MACOM. FOSLs at active (operational) Army facilities and civil works projects will be the same as approval authority for the lease, except when the property may contain Unexploded Ordnance (UXO). Those leases of property approved by the Secretary of the Army will have a FOSL approved by the DASA (ESOH).

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6. An EBS is required for termination of **any** lease. Upon termination, the Army component and grantee will jointly conduct a final EBS, funded by the grantee, to ascertain any changes in the environmental condition of the subject property. If the grantee does not participate, the IC/Army proponent will conduct the final EBS, to be funded by grantee, and provide a copy to the grantee. The grantee shall be made aware of this procedure in the original outgrant document.


7. For renewal of existing leases which have previously had an EBS, or other versions of environmental documents, the IC/Army proponent must ascertain if environmental conditions have changed. If an environmentally significant change has occurred it will be documented as an amendment to the EBS. A copy of the amendment will be provided to the grantee. If there is an existing lease that is up for renewal but for which an EBS or a PAS was not performed, the EBS and FOST/FOSL/ECOP requirements described above apply.

8. Information provided by the EBS will be integrated and documented by reference or actual text in the appropriate NEPA document prepared in accordance with AR 200-2, for military actions or ER 200-2, for civil works actions.

9. POC is Karen Bowen, 202-761-1746.

FOR THE COMMANDER:

Encls  
nc

  
ELIZABETH L. FAGOT  
Acting Director of Real Estate

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